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National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*

Tonga

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I. Introduction

1. The Kingdom of Tonga's second national report was reviewed by the Human Rights Council Working Group on the Universal Periodic Review on 21 January, 2013. The Human Rights Council selected a Troika from the countries of Angola, Costa Rica and Pakistan to facilitate the review of Tonga. The Tonga delegation was headed by Lord Vaea, Minister of Internal Affairs, accompanied by Mr. 'Aminiasi Kefu, Solicitor General and Mr. Sonata Tupou, Chargé d'Affaires, Tonga High Commission, London.

2. Tonga received Eighty-eight recommendations during the interactive dialogue with the Working Group. Fifty-three recommendations presented by States were acceptable to Tonga, as they were currently pursued or already achieved by Government. Three recommendations were already implemented. However, twenty-eight recommendations were quite sensitive to Tonga's circumstances, and they needed further careful consideration. The four recommendations that were not accepted were against Government policy and priorities.[1]

3. A further statement was prepared by Tonga in response to the twenty-eight recommendations that were deferred. This was submitted for final consideration of the Human Rights Council in its 23rd Session whereby Tonga's second report was adopted by the Working Group on 06 June 2013.

4. Tonga continues to progressively work on the recommendations of the Universal Periodic Review through its relevant stakeholders with the support of the official institutions and intergovernmental agencies.

II. Methodology and process for preparing the report

A. Methodology for preparing the report

5. In accordance with the establishment of the Government UPR Working Group (UPR – WG) by His Majesty's Cabinet on 27 January 2012[2], the Prime Minister's Office (PMO), as Chair with the Attorney General's Office (AGO) instigated the preparations for Tonga's Third National Report on the Universal Periodic Review to the United Nations Human Rights Council.

6. The UPR-WG commenced the drafting of the report in consultation with the following Government ministries and departmental agencies: Ministry of Foreign Affairs, Ministry of Education and Training, Ministry of Health, His Majesty's Armed Forces, Ministry of Internal Affairs – Women's and Disabilities Divisions, Ministry of Justice, Ministry of Land and Natural Resources, Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications (MEIDECC) – Environment and Information Departments, Ministry of Police, Prisons Department and the Bureau of Statistics.

B. Process for preparing the report

7. Since the 2nd UPR review in 2013, Tonga has participated in one regional capacity building program that was organized by the United Nations High Commissioner for Human Rights (OHCHR) in November 2015. Tonga also took part in the Regional Consultation on the UPR for Pacific States in October 2016 that was organized by the Pacific Community Regional Rights Resource Team (SPC RRT).

8. Based on recommendations from the regional workshop and consultation, the Tonga UPR-WG commenced preparations by contacting the relevant government agencies and stakeholders to re-establish contacts and familiarize them with the UPR report and process. They discussed the recommendations from the first and second report and collected updates and progress reports on the thematic areas of the UPR.

III. Implementation of recommendations from the previous cycle (2013)

A. Treaty ratification, treaty reporting and overall work with human rights mechanisms

1. Consider and take steps to ratify the United Nations Convention Against Torture[3]

9. Tonga still has time to consider the ratification of the Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) before 2018.

10. In October 2016 Tonga was represented at the Convention Against Torture Initiative (CTI) Regional Workshop held in Fiji.

11. In June 2017, His Majesty's Cabinet established a Committee comprised of relevant Ministries, Department and Agencies to consider the ratification of CAT and to review relevant legislation.[4]

12. The Tonga Police in their proposal for the establishment of a Committee to consider the ratification of CAT stated that CAT will provide a legal framework for a "zero tolerance" approach to torture and abuse, assist police, corrections facility officers and other forces by its clear guidance on the issue of accountability for their actions.

13. CAT promotes the development of good governance, the rule of law and security through mechanisms of accountability and international review.

14. In October 2017, Tonga was represented at a Roundtable Meeting with the Convention against Torture Initiative and the Office of the High Commissioner for Human Rights for ratification of the UN Convention against Torture.

15. However it is important to note that despite the fact Tonga has not ratified CAT, Tonga does not tolerate police brutality. Five police officers were prosecuted for manslaughter and assault on a Tongan New Zealand Police Officer who was visiting Tonga. Two of the police officers were convicted of manslaughter and one Police Officer was convicted of common assault. The civilian involved was convicted on a separate trial by a judge and jury with causing grievous harm to the victim.[5]

16. Tonga still has a whipping provision in it's *Criminal Offences Act* [Cap 18][6]. Tongan case laws has set aside whipping sentences. This is seen in the case of *Fangupo v R* [2010] Tonga LR 124 – the sentence of whipping was set aside, as it was imposed. The Court of Appeal held that whipping could be considered unlawful in Tonga. The prohibition against torture is part of customary international law and is a rule from which states cannot derogate, whether or not they are a party to the various treaties such as CAT which prohibit it.[7]

17. The *Education (Schools and General Provisions) Regulations 2002* provides that under no circumstances shall a teacher inflict corporal punishment on any student.[8]

18. The *Family Protection Act 2013* also protects women and children from abuse and corporal punishment.

2. Consider ratification of core international human rights treaties and optional protocols (ICCPR, ICESCR, CRPD and CRC OPS)[9]

19. In May 2017, Tonga was represented at a Training on the Benefits to Pacific Island Nations of National Mechanisms for Human Rights Implementation/ Reporting and the Two Covenants, ICCPR and ICESCR hosted by the Office of the Human Rights Commissioner in Nadi, Fiji.

20. In June 2017, His Majesty's Cabinet established a Committee comprised of relevant Ministries, Department and Agencies to consider the ratification of CAT and to review relevant legislation.[10] The Tonga Police is piloting the process for the ratification of CAT.

21. Although Tonga has not ratified ICCPR, the Tongan laws continue to comply with the ICCPR principles as seen in the case of *R v Vola* [2005] Tonga LR 404, where the Tongan courts applied the principles of ICCPR despite Tonga's non-ratification.

22. Although Tonga has not ratified ICESCR, the principles of ICESCR are incorporated in the Tongan laws, which includes laws to the right to adequate health care, right to education, and the right to a decent home, food, shelter, the right to fair wages and equal remuneration for equal value and right to take part in cultural life:

(a) New *Education Act 2013* provides for that the compulsory school age is between 4 and 18 years of age.[11] This was an increase from the previous compulsory school age of 6 to 13 years. It also imposes an obligation on parents to have a duty to have the child educated.[12] The Act also introduces the principle of inclusive education for children with special needs, all children under the age of 19 year has a right to access quality education in Tonga, irrespective of the child's gender, religion, socio-economic status, physical condition and location.[13]

(b) Tonga continues to have a Health Services Act 2010, Medical and Dental Practice Act 2001, Mental Health Act 2001, Public Health Act 2008, Tobacco Control Act 2002 and other pieces of legislation continue to govern and monitor medical and health services in Tonga. The Ministry of Health is currently reviewing some of these legislation to ensure that it has more modern provisions and to ensure that it is in line with international standards.

(c) Tonga has an Employment Relations Bill 2013 which is currently under consultation. This Bill ensures the fundamental rights and principles at work which includes prohibition of forced labour, freedom from discrimination, equal remuneration for work of equal value, freedom of association and rights to bargain collectively.[14] Tonga is hopeful, that the consultations on this Bill will be complete and the Bill will be submitted to the Legislative Assembly for further debate.

23. On 6 June 2014 His Majesty's Cabinet approved the Tonga National Policy on Disability Inclusive Development 2014-2018 and for the Tongan Government to ratify the Convention on the Rights of Persons with Disabilities.[15]

24. On 20 January 2015, the Social Protection and Disability Division was established under the Ministry of Internal Affairs as a focal point for persons with disabilities.

25. In 2016 the Social Protection and Disability Division worked together with the Attorney General's Office to look at reviewing legislation to expedite the ratification of CRPD.

26. In 2017 the Social Protection and Disability Division conducted public consultations to all the Tongatapu districts and the outer islands on the Convention to create awareness before ratification.

27. In June 2017, the Social Protection and Disability Division engaged technical assistance from the Pacific Islands Forums Secretariat and the UNESCAP Pacific Office to examine the CRPD ratification and legislative implementation.

28. Tonga still has time to ratify the CRPD by 2018.

29. Although Tonga has not ratified the CRC Optional Protocols, the Tongan laws are in line with the Protocols. The *Pornography Control Act 2002* criminalizes the sale or hire of pornographic material.[16] The *Criminal Offences Act* [Cap 18] criminalizes any person who publishes child pornography, produces child pornography or possesses child pornography; [17]criminalizes trading in prostitution[18]; and criminalizes a person who has carnal knowledge of a child or young person under the age of 12 years.[19]

3. Consider ratification of the Rome Statute of the International Criminal Court and fully align it's legislation with all obligations under the Rome Statute[20]

30. The Attorney General's Office sought the assistance of the International Committee of the Red Cross in drafting a policy paper to His Majesty's Cabinet proposing the ratification of the Rome Statute on the International Criminal Court in 2013.

31. Tonga is considering domesticating specific legislation for the Rome Statute to apply within the Kingdom. This includes costs and the extent of the actual legislative review.

32. Tonga is hopeful to ratify the Rome Statute by 2018.

4. Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Their Families) as well as the ILO Convention[21]

33. Tonga became the 187th member state of the International Labour Organization (ILO) with effect from 24 February 2016. By becoming a member of the ILO, Tonga is indicating its commitment to decent employment opportunities, enhancing social protection and strengthening dialogue on work-related issues.[22]

34. Tonga has not ratified any ILO Conventions in its accession at this point of time, any ratification is subject to prior consultation with key stakeholders.[23]

35. In October 2017, Tonga was represented in the Pacific Consultation on Alliance 8.7 – Ending child labour, forced labour, modern slavery and human trafficking and preparing for the 4th Global Conference on the Sustained Eradication of Child Labour in Nadi, Fiji.

36. The Ministry of Internal Affairs has a specific division to looking after the interest of seasonal workers under the Recognized Seasonal Employer (RSE) Program by the government of New Zealand and the Australian Pacific Seasonal Worker Program Scheme (SWP).[24]

37. The Tongan Government gives special attention to ensure current seasonal workers are entitled to all relevant benefits and are not abused.[25]

B. Democratization and law reform process

1. Continue the momentum on the democratization process to ensure equal and full enjoyment of fundamental and human rights[26]

38. Tonga had its second general election under the new constitutional and political structure on 27 November 2014.

39. On 29 December 2014, Mr. Samuela 'Akilisi Pohiva, People's Representative for Tongatapu 1 was nominated by the Assembly to be appointed by the Monarch as Tonga's

second elected Prime Minister under the new 2010 reforms. Mr. Pohiva became the first commoner to be democratically elected by a predominantly elected Parliament.

40. The new Prime Minister then went on to nominate eleven Representatives from the Assembly, one Noble's Representatives and ten People's Representatives to be appointed by His Majesty as Cabinet Ministers.[27]

41. His Majesty's Cabinet continued as the highest executive body, replacing the Privy Council.

42. As expected with a new Cabinet, there was a number of re-shuffling of Ministerial portfolios and dismissals by the Prime Minister in his years in Office.

43. The changes in Government resulted in a submission to the Speaker of a motion for a vote of no confidence by the Noble's Representatives. This motion was tabled on Monday 20 February 2017 [28] and it took 7days to consider. It culminated in the rejection of the motion on 27 February 2017 by a vote of 14–10 and one representative abstained from voting.[29]

44. The Legislative Assembly was dissolved by an Instrument of Dissolution in accordance to clauses 38 and 77(2) of the Act of Constitution of Tonga (Cap 2) effective on 24 August 2017. The next general election for Tonga will be held on 16 November 2017.[30]

2. Continue to uphold and defend the fundamental values enshrined in its constitutional history[31]

45. Tonga continues to be committed to maintaining the core human right values that are protected in the Tongan constitution. These include: the right to live in freedom; freedom to own and dispose property; freedom from slavery; equality of application of laws to all, regardless of gender, class, ethnicity or any classification; freedom of worship; freedom of expression; freedom of petition; freedom from unlawful detention (habeas corpus); right to fair trial; protection from double jeopardy; and, protection from unlawful arrest and search.

C. Gender equality

1. Promote and increase women's participation in political life and formal decision making levels[32]

46. Tonga has continued to make commitments on the international, regional and national level to improve women's political participation.

47. Tonga is committed to Sustainable Development Goal 5 to achieve gender equality and empower all women and girls.

48. 16 of 106 candidates for the 2014 General Elections were women, despite the high number of women, none were successful in the elections.

49. However, after a Supreme Court ruling in January 2016[33] one of the members of Parliament was forced to vacate his seat. This led to a by-election in July 2016 that resulted in a female candidate being elected into Parliament.

50. The November 2017 Elections has a total of 86 candidates, where 15 of thos candidates are women.

51. Tonga continues to have a Women's Division under the Ministry of Internal Affairs to look after women affairs and the implementation of the *Family Protection Act 2013*.

52. Tonga announced that it is ready to ratify CEDAW at the 59th session of the Commission on the Status of Women at the UN General Assembly in New York on 12 March 2015.

53. In September 2015, the third and Final Report for Tonga and the Millennium Development Goals was submitted to the United Nations the report showed progress and achievements to eliminate gender disparity in primary and secondary education.

54. The Tongan Government introduced the Tonga Strategic Development Framework 2015-2025 in 2015 and one of the seven national outcomes is for a more inclusive sustainable and empowering human development with gender equality. This is supported by the following Organisational Outcomes under the Social Pillar:

(a) improve gender equality by implementing the government's gender development policy and ensuring a more balanced and effective engagement by both men and women in decision making and social, economic and political institutions (OO2.1e);[34]

(b) while recognizing the high status of women in Tongan culture, ensure that improved gender balance is built into all policies, plans, laws and initiatives (OO 2.3f);[35]

(c) develop an education system that better addresses the needs of both girls and boys and ensures a better gender balance at all stages of schooling (OO 2.4d);[36]

(d) build strong gender awareness, sensitivity to differences in needs in abilities, and other criteria into all programs.(OO 2.7f);[37]

(e) improve understanding of the many ways in which people resident in Tonga and overseas (in particular the Diaspora) interact in beneficial ways, and support the development of institutional arrangements and international agreements which facilitate this interaction - taking account of gender and other differences(OO 2.8a).[38]

55. Tonga was represented on the Promoting Evidence Based Policy Making for Gender Equality: Workshop on Gender training needs and design and Tonga Gender profile information and consultation meeting held in July 2017.

56. This was an Asian Development Bank (ADB) project aimed to develop a national capacity for gender mainstreaming in health and discussions on the role of statistics and gender indicators in decision making and identify priorities for training and developing capacity in this area.

57. Women are being increasingly represented in managerial and higher administrative positions in both government and private sectors. Since 2013, 13 women have held or currently holding Chief Executive Officer positions in Government.[39]

58. Tongan women also hold diplomatic positions overseas. To date the Ambassador of Tonga to Australia, Ambassador of Tonga to Japan, Tonga Consul General in San Francisco and Honorary Consulate of France, Netherlands and Sweden are women.

59. The Public Enterprise Boards have women as Directors, Deputies or members including Tonga Communications Corporation, Tonga Broadcasting Corporation, Tonga Water Board, Tonga Post & Fast Print Ltd, Tonga Airports Limited, Tonga Market Ltd and Ports Authority.

60. Women also hold prominent roles in the private sector as successful medium to small business owners and managers of retail stores; café and restaurants; hotel, resort and tourist facilities, catering services, handicraft and local produce market stalls, pre-school and day-care child services and more.

61. Tongan women also hold leadership roles in the regional and international organizations, for instance a Tongan woman was appointed to the position of United

Nations High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) in May 2017. Thus becoming the first Tongan to hold such a senior position in the United Nations.

62. In 2014, the Legislative Assembly held the first ever Practice Parliament for Women in Tonga. This event was to increase the potential of women to become effective political leaders. It was to encourage and empower women to achieve their potential as leaders. This was supported by the United Nations Development Programme (UNDP).[40]

63. Tonga launched its Tonga Revised National Policy on Gender and Development in May 2014.

64. This Gender Policy was a result of collective partnership between Government, the Private Sector, Civil Society, the Community, and Development Partners.

65. The Tonga Revised National Policy on Gender and Development identified six Gender Equity Issues in Tonga namely:

- Family and Social Issues;
- Unequal access to employment and productive assets;
- Unequal Political Representation and Participation in Decision-Making;
- Different vulnerability, roles and capacity to respond to disasters;
- Environmental and climate change not properly acknowledged, by national strategies;
- Vulnerable women; and
- The Weak enabling environment for gender mainstreaming.

66. In June 2016, a one day National Women's Forum was held to discuss the progress on the National Policy on Gender and Development 2014-2018. Key stakeholders from the Women's Division of the Ministry of Internal Affairs, Tonga police, Ministry of Finance and other government departments with representatives from the Tonga National Centre for Women and Children, Women and Children Crisis Centre, Girl Guides, Civil Society and NGOs attended. The Minister of Internal Affairs speech stated that the statistics revealed gaps between men and women in regards to both genders in various aspects. In the 2011 census, there were 51,979 men and 51, 273 women recorded in Tonga. Paid workers were 13,977 men and 9,721 women, while unemployment rate was at 33% for men and 33.3% for women. In addition a report from Tonga Police showed from 2000-09, 2,753 women had been physically abused.

2. Curb Violence against Women[41]

67. Tonga continues to be committed to eliminating violence against women.

68. The *Family Protection Act 2013* was passed by the Legislative Assembly on 4 September 2013. It was then proclaimed into force on 1 July 2014. The Act is to provide for greater protection from domestic violence, to introduce protection orders, clarify duties of the police and promote the health, safety and well-being of victims of domestic violence and related matters.[42]

69. The *Family Protection Act 2013* is the first Act in Tonga to state that domestic violence is an offence. It defines domestic violence to include a person who threatens, intimidates or assaults a health practitioner or social service provider who is acting in pursuance of a duty of care.[43]

70. The Women Division of the Ministry of Internal Affairs went through extensive consultations (including public and media consultations, television and radio programs) to ensure the public understands the concepts of the new *Family Protection Act 2013*.

71. The main mandate of the Women's Division is to monitor and ensure the effective implementation of the *Family Protection Act 2013*.

72. The Attorney General's Office has specific legal counsels who deal with domestic violence cases. The Office continues to work closely with the Domestic Violence Unit of the Tonga Police and meet regularly to ensure that domestic violence cases are prosecuted.

73. The Ministry of Justice continues to have on-going projects with Australian Government (DFAT) (Families Free of Violence), SPC/RRRT (Guidelines for Magistrates, Community Legal Centre) and Pacific Judicial Strengthening Initiative –PJSI- (Judicial training and strengthening relevant data collection capacities) on how to eliminate violence against women in Tonga.

74. In 2016 the *Evidence (Amendment) Bill 2016* was introduced to Parliament to remove the requirement for corroboration of evidence in sexual offences. This Amendment was a result of the case *Rex v Koloamatangi* CR 106/13 where the trial judge Cato J expressed concerns over the uncertainty whether corroboration was required in sexual complaints in Tonga. He stated there was no certain statutory requirement for corroboration in the Tongan Evidence Act in cases of sexual complaints.

75. The *Evidence (Amendment) Bill 2016* was introduced but it was not passed by Parliament. Tonga still needs time to fully grasp the need to remove corroboration evidence in cases of sexual offences.[44]

76. Marital Rape is criminalized in the *Criminal Offences Act* [Cap 18] after the repeal of s.118(2) in 1999.

77. Tonga official launched the Unite Campaign Orange Day on the 25 June 2014. This was to show a united front in Tonga to end violence against women. It was supported by the Government, Civil Society, Non-Government Organisations and development partners like UNDP and Australian Aid.[45]

78. Tonga Police continue to host a program to mark White Ribbon Day to end violence against women. The White Ribbon campaign in Tonga reminds the Tonga Police that they have a major role in ending violence against women by responding to cases of abuse and also showing the community that violence against women is unacceptable.[46]

79. Tonga launched an International Women's Day Media Workshop which was held on 12 April 2013.

3. Enact laws to protect women in employment free from any form of discrimination[47]

80. Tonga Police have policies that cover for equal opportunity for both sexes in their Recruitment, Promotion, Transfer and Leave Management policies.[48]

81. His Majesty's Armed Forces have updated their Regulation and polices granting equal opportunity to women in the military, including permission to marry outside the military, serve in operations overseas and open to all trades except the infantry and on-board patrol boats.[49]

4. Facilitate access of women to sexual and reproductive health[50]

82. Tonga launched the National Integrated Sexual and Reproductive Health Strategic Plan (2014-2018) in 2014 with M & E frameworks and National Implementation Plan. This Plan was to attain high standard of health and quality of living through improved sexual and

reproductive health care service for all the people in Tonga at all levels, irrespective of status, sex, age or creed. This was supported by UNFPA and SPC.[51]

83. The Ministry of Health hosted a workshop on Family Planning Guidelines and Sexual Reproductive Health Policy to re-design and review the Sexual Reproductive Health Policy in Tonga on 25 July 2017. This was to also address the current adolescent pregnancy rate, where 30 births per 1,000 girls aged between 15 and19.[52]

5. Promote equality between sexes and discriminatory treatment related to sexual orientation or gender identity[53]

84. The third and Final Report for Tonga on the Millennium Development Goals was submitted to the UN. This report revealed the progress and achievements of Target 3A.

85. The *Tonga Strategic Development Framework 2015-2025: A more progressive Tonga: Enhancing Our Inheritance* is the Kingdom's current national development framework.

86. One of the Seven National Outcomes is for a more inclusive, sustainable and empowering human development with gender equality. This is supported by the following Organisational Outcomes under the Social Pillar:

- improve gender equality by implementing the government's gender development policy and ensuring a more balanced and effective engagement by both men and women in decision making and social, economic and political institutions (OO2.1e);[54]
- while recognizing the high status of women in Tongan culture, ensure that improved gender balance is built into all policies, plans, laws and initiatives (OO 2.3f);[55]
- develop an education system that better addresses the needs of both girls and boys and ensures a better gender balance at all stages of schooling (OO 2.4d);[56]
- build strong gender awareness, sensitivity to differences in needs in abilities, and other criteria into all programs.(OO 2.7f);[57]
- improve understanding of the many ways in which people resident in Tonga and overseas (in particular the Diaspora) interact in beneficial ways, and support the development of institutional arrangements and international agreements which facilitate this interaction – taking account of gender and other differences(OO 2.8a).[58]

87. Tonga hosted a Pacific LGBTQI Human Rights Conference in May 2015. The theme of this conference was "Our voices, our Communities, our Rights: Advancing Human Rights related to Sexual Orientation, Gender Identity & Expression in the Pacific".[59]

88. The Tonga Leiti's Association was established in 1992 with a focus on improving the rights and celebrating the contribution of Leitis in Tonga and to respond to the HIV epidemic. The Association launched their Strategic Plan 2016-2020 in 2016. The vision of the Plan was for Tonga to respect and uphold the rights of person with diverse sexual orientations and gender identities.[60]

89. One of the main goals of the Plan was to reduce stigma and discrimination against Leitis and People Living with HIV. The Plan also aims to educate and advocate on international human rights law, recent international developments and agreed principles such as the Yogyakarta Principles.[61]

90. Tonga Leitis Association continued to host a National Consultation with the theme "Together for a positive change – Leave no one behind" on October 2016. The Conference

covered topics which included the impact of current legislation on Leitis Living in Tonga and the impact of legislation changes on the communities.

91. In March 2017, the Tonga Leiti Association started a campaign in Tongan schools to try and reduce bullying of transgender students.[62]

92. In October 2017, the Tonga Leitis Association conducted Trans Health Blueprint Workshop with the theme Transgender people should have access to good quality health care in Tonga. This aim of the workshop is to educate trans men and trans women on their health rights in the community.

D. Thematic human rights issues (prevention of torture, rights of children, freedom of expression, disabilities, anti-corruption)

1. Pay increased attention to rights of children, ensure equal public participation, nationality and rights of children born out of wedlock[63]

93. There is no universal legal age of majority in Tonga, for instance, a Tongan male can own a piece of land at the age of 16, a person can marry at the age of 15 with parental consent, but cannot drive until the age of 21.

94. The definition of a child is not clearly defined in any legislation in Tonga. However Tonga is now working towards an age of majority, for instance the Births, Deaths and Marriage Registry is currently reviewing its marriage laws to increase the age of marriage.

95. The "Let Girls Be Girls" campaign was launched by the Talitha Project sponsored by SPC/RRRT and UN Women. This campaign was to support the increase in marriage age for females.

96. Tongan children born of either a Tongan father or mother are entitled to a Tongan nationality.[64]

97. In November 2016, Cabinet approved the proposal to create and review a Criminal Justice Policy. Government condemns all forms of racial discrimination in the country; denounce and revile the violent criminal behaviour, victimizing the vulnerable members of our society such as women, young people and the aged.

98. A Cabinet Sub-Committee was established to create/review the Government criminal justice policy. The first Report of the Cabinet Sub-Committee on Criminal Justice Policy for Government was submitted to Cabinet in January 2017.[65]

99. A FALE committee was established in 2014 to overlook social issues relating to children, for instance school fights and cyberbullying of children. This is chaired by the Chief Executive Officer for Education.

100. Children born out of wedlock remain to have different rights from those born in wedlock. Changes to this system would require cultural changes and rights. However it is important to note that children born out of wedlock can lease land, they are still entitled to a Tongan nationality and passport but they cannot inherit hereditary titles.

2. Take measures to reinforce protections for freedom of expression[66]

101. The Freedom of Information (FOI) Policy approved by His Majesty's Cabinet in 2012, strengthens the Freedom of Speech, Expression and the Press that are guaranteed in Clause 7 of the Constitution of Tonga.

102. The FOI Unit was established within the Ministry of Information and Communications to coordinate all the information disclosure and dissemination within the

Public Service, providing policy advice and guidelines for compliance and the implementation of the FOI Policy that was formally launched on 28 June 2012.[57]

103. In support of the FOI Policy, systems and structures, such as the FOI Unit and the Cabinet Steering Committee, were established to manage a phased process of implementation.

104. By 2014, implemented activities included the development of public education and awareness materials, training manuals and toolkits for public authorities, the conduct of training and sensitization sessions, and the preparation of budgets.

105. The Government continued to develop a Freedom of Information Law that will give to the people of Tonga a legally enforceable right to have access to government information. This is in keeping with an on-going commitment to encourage a more open, transparent and accountable government following the political reforms of 2010.

106. In April 2014, a technical legal advisor, funded by the United Nations Development Programme (UNDP), conducted a series of meetings and consultations with key FOI stakeholders. This is with a view to inform the development of a working draft FOI Law for public consultation.[58] Legislation for the FOI will need to be reviewed in consideration of the changes to the infrastructure and current developments of the nation.

107. On 10 June, 2017, Tonga celebrated *International Archives Day* for the very first time. This initiative, coordinated by the Cabinet Sub-Committee on the FOI Policy through the Ministry of Information and Communications, highlighted Tonga's commitment to start the Government's work towards better records management systems and information infrastructures.[59]

108. When the current Government came into power, the integral function of disseminating Government information to the public was carried out by the Prime Minister's Office and the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change & Communications (MEIDECC). The revised processes to be utilized were clarified with the Prime Minister's Office being responsible for enquiries and the release of information relating to the Hon. Prime Minister and his initiatives.

109. There are currently five newspaper operators in Tonga, two television channels and 5 radio stations that provide news daily for the Kingdom.

3. Promote human rights education through international and regional cooperation[70]

110. Efforts have been made to strengthen human rights education, training of public officials and the participation of civil society in the promotion and protection of human rights through international and regional cooperation.

111. Tongan Government provides free Primary Education for Tongan children who attend the Government Primary Schools.

4. Consider signing and ratifying CEDAW and consider issues relating to equal right of women to administer property and the equal right to ownership, acquisition, management, enjoyment and disposal of property[71]

112. On 6 March 2015, His Majesty's Cabinet approved for the Tonga to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

113. On 9 March 2015, Tonga made an international commitment during the 59th Session of the Commission on the Status of Women (CSW).

114. Tonga is currently working on revising the reservations to CEDAW to be consistent with issues raised by the public before it can proceed to the ratification process.

115. The *Royal Commission Final Report* recommended that a woman who is a Tongan subject upon attaining the age of 21 years has the right to apply for grant of a town allotment, which can be registered under her name. Upon her death, the land shall devolve according to the succession laws, which shall be amended accordingly. For now women should not be allowed to apply for and gain a registered tax allotment. The status quo should remain with men being allowed to hold tax allotment.[72]

116. The *Royal Land Commission* recommended that the termination of an unmarried daughter's right upon proof of her having committed adultery or fornication is repealed.[73]

117. The *Royal Land Commission* recommended that the restriction on the inheritance of a daughter when she married should be removed. Where there is no male heir of the deceased landholder, his daughters shall succeed the land.[74]

118. The *Royal Land Commission* recommended that the rights of a widow to land that has been newly acquired by her husband should allow her to lease or mortgage the land with the consent of the heir, and where she had no children with her husband, then consent is not required.[75]

119. Work still needs to be initiated to implement the recommendations made by the Royal Land Commission.

120. However it is important to note that the Chief Executive Officer for the Ministry of Lands, Survey and Natural Resources is a female.

5. Consider the implementation of recommendations by special procedures so that there are institutional safeguards against harsh treatment by police and security forces[76]

121. Tonga still has time to incorporate the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the Bangkok Rules, as part of its work on the treatment of prisoners.

122. It is important to note that female prisoners in Tonga are kept separately from the male prisoners.

123. There is an increase in the number of female prison officers and prison officers are now more exposed to a lot of training with regards to the rights of prisoners.

6. Consider national, regional and international support to the promotion of portable water and sanitation[77]

124. The Ministry of Lands and Survey introduced the *Water Resources Bill 2016* to the Legislative Assembly. This Bill was focused on looking at the ownership and management of water resources and powers of the Ministry over the water resources. However due to strong oppositions from the general public, this Bill was referred back to the Ministry.

E. National human rights mechanism

Pursue its efforts to create a national human rights institution in compliance with Paris Principles[78]

125. For small islands states including Tonga, the establishment of a national human rights institution is still not feasible financially and technically.

126. However several actions taken by the Government are in line with the Paris Principles.

127. The Legislative Assembly passed an amendment to the *Commissioner for Public Relations Act 2001* in 2016. This amendment re-named the Commissioner of Public Relations as the Ombudsman, this change is to ensure that Tonga is in line with international references to the ombudsman.

128. The Ombudsman's Office is even working on public awareness, this is by conducting community outreach programs and television programs all throughout Tongatapu and the outer islands, for instance in August 2017, the office conducted 29 outreach programs[31].

129. The increase in awareness in the roles of the ombudsman is reflected in the increase in the number of complaints the Office is now taking:

Complaints made to the ombudsman's office[32]

Year	No. of complaints
2011–2012	16 complaints
2012–2013	10 complaints
2013–2014	48 complaints
2015	Phone complaints (25)
	Visits complaints (45)
	Written complaints (23)
	93 complaints

130. The Legislative Assembly passed an amendment to the *Anti-Corruption Commissioner Act 2007* in 2016, to allow for the Ombudsman to become the temporary Anti-Corruption Commissioner to serving the Commissioner role. However the Royal Assent for this Act was deferred for further clarifications.

131. Tonga signed the *Members of Parliament Denarau 2015 Declaration on Human Rights and Good Governance* in 2015. By signing this MPs were committed to enhancing conventions and laws which enhance good governance and the realisation of human rights for all Pacific people.[33]

132. Tonga is a member of the International Ombudsman Institute Conference and Tonga has made a commitment in the Bangkok Declaration to give constitutional status to Ombudsman institutions. The Bill for this change was successfully passed by the Government Law Committee, but it has not been put forward to Cabinet and the Legislative Assembly due to the dissolution of the Legislative Assembly in August 2017.

133. Tonga was represented that the United Nations Office on Drugs and Crime (UNODC) Anti-Corruption Advanced Investigations Workshop in 2017.

F. Promotion and protection of human rights, education and public awareness

1. Promote social and economic development to eliminate poverty[34]

134. In 2016 Government initiated a "*Ta'u ki ai*" cash assistance to persons with disabilities.

135. NGOs initiate programmes like TYEE to encourage youth employment and support.

2. Develop institutional framework to promote and protect human rights[83]

136. Human Rights issues are enshrined in the institutional frameworks of Tonga to promote and protect human rights. For instance the Climate Finance and Risk Governance Assessment has a Gender and Social Inclusion analysis.

3. Consider standing invitation to the special procedures[84]

137. Tonga continues to welcome special rapporteurs depending on the political will of the time.

IV. Challenges which would require the support of the international community

138. Considerations for legislative amendments to implement the provisions of CAT include revision to laws - Constitution of Tonga, Criminal Offences Act, Tonga Police Act 2010, Prison Act 2010, Extradition Act, Royal Tonga Armed Forces and others. A domestic roadmap is seeking that support from inter-governmental institutions and assistance from OHCHR, APT, SPC – RRRT and others.

Notes

[1] *Report on the Second UPR Report*, Tonga, Cabinet Decision number 406 of 10 May, 2013.
[2] Cabinet Decision number 45 of 27 January, 2012.
[3] Recommendation 79.7 (Norway); 79.8 (Switzerland); 79/9 (Timor Leste); 79.10 (Turkey)(UK and Northern Ireland); 79.12 (Argentina); 79.16 (Costa Rica); 79.18 (Slovakia);79.44 (Italy); 79.45 (Argentina); 81.15 (Norway); 81.16 (Spain); 81.18 (Australia); 81.19 (Chile); 81.20 (France); 81.21 (Slovakia)81.22 (Italy); 81.23 (Costa Rica); 81.24 (France) 81.25 (Slovenia); 81.26 (Mexico).
[4] Cabinet Decision No. 598 of 14 June 2017.
[5] *Rex v Hala'ufia & ors* (Unreported , CR35,36,91,92,93-13, Cato J).
[6] s.146 *Criminal Offences Act* [Cap 18] (Tonga).
[7] Peter Creighton (editor) Pacific Human Rights Law Digest, Volume 3, PHRLD (2011) 46.
[8] Regulation 40(4) *Education (Schools and General Provisions) Regulations 2002* (Tonga).
[9] Recommendation 79.1 (Bhutan); 79.2 (Indonesia); 79.3 (Brazil); 79.4 (Phillipines); 79.5 France; 79.6 (Japan); 79.7 (Norway); 79.8 (Switzerland); 79.9 Algeria, Viet Nam) (Timor Leste); 79.10 (Australia, UK) (UK, Northern Ireland) (Turkey); 79.11 (Chile); 79.12 (Argentina); 79.13 (Hungary); 79.14 (Latvia); 79.15 (France); 79.17 (Mexico); 79.18 (Slovakia); 79.27 (Uruguay);79.28 (Guatemala);81.17 (United Kingdom of Great Britain and Northern Ireland); 81.18 (Australia, United Kingdom of Great Britain and Northern Ireland).
[10] Cabinet Decision No. 598 of 14 June 2017.
[11] s.98 *Education Act 2013* (Tonga).
[12] s. 99 *Education Act 2013* (Tonga).
[13] s.111 *Education Act 2013* (Tonga).
[14] Part II, *Employment Relations Bill 2013* (Tonga).
[15] Cabinet Decision No.368 of 6 June 2014.
[16] s.5 *Pornography Control Act 2012* (Tonga).
[17] s.115A *Criminal Offences Act* [Cap 18] (Tonga).
[18] s.81 *Criminal Offences Act* [Cap 18] (Tonga).
[19] s.121 *Criminal Offences Act* [Cap 18] (Tonga).
[20] Recommendation 79.14 (Latvia); 79.15 (France); 79.16 (Costa Rica); 79.19 (Slovakia); 79.20 (Estonia).
[21] Recommendation 79.21 (Phillipines).
[22] Kingdom of Tonga has become the 187th International Labour Organization (ILO) Member State)' (25 February 2016) http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_455305/lang--

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[24] Government of Tonga Budget Statement for Year ending 30th June 2018 (2017) 32.

[25] Government of Tonga Budget Statement for Year ending 30th June 2018 (2017) 22.

[26] Recommendation 79.23 (Viet Nam); 80.1 (Malaysia).

[27] 'Tonga's new Prime Minister –elect' - 'Akilisi Pohiva' (29 December 2014) http://www.pmo.gov.to/tongas-new-prime-minister-elect-akilisi-pohiva/ (Accessed 18 October2017).

[28] 'Notion of a Motion for a Vote of No Confidence in the Prime Minister' (14 February 2017) http://www.mic.gov.to/news-today/press-releases/6541-notice-of-a-motion-for-a-vote-of-no-confidence-in-the-prime-minister (Accessed 18 October 2017).

[29] 'Tonga Prime Minister Survives Vote of No-Confidence' (27 February 2017) http://www.pireport.org/articles/2017/02/27/tonga-prime-minister-survives-vote-no-confidence (Accessed 18 October 2017).

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[32] Recommendation 79.32 (Burundi); 79.33 (New Zealand); 79.34 (Slovenia); 79.35 (Thailand); 79.36 (Algeria); 81.4 (Trinidad and Tobago).

[33] *Viliami Uasike Latu & anors v. Etuate Sungalu Lavulavu* (Unreported, CV 90/14, LCJ Paulsen, 29 January 2015).

[34] Tonga Strategic Development Framework II, Ministry of Finance & National Planning, Government of Tonga (TSDF II) p.118.

[35] TSDF II p.119.

[36] TSDF II p.119.

[37] TSDF II p. 120.

[38] TSDF II p.120.

[39] Chief Secretary and Secretary to Cabinet, Prime Ministers Office; CEO, Ministry of Finance and National Planning; CEO, Ministry of Lands and Natural Resources; CEO, Ministry of Internal Affairs; CEO, Ministry of Justice; CEO, Office of the Public Service Commission; CEO, Ministry of Tourism; (former) CEO, Ministry of Commerce, Consumer Affairs, Trade Innovation and Labour; CEO, Ministry of Agriculture, Forests, Fisheries and Food; Clerk of Parliament, Legislative Assembly; Lord Chamberlain, Office of the Lord Chamberlain.

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[42] *Family Protection Act 2013* (Tonga) Preamble.

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[43] Recommendation 79.32 (Burundi); 81.5 (Argentina); 81.6 (Norway); 81.7 (Spain); 81.8 (USA); 81.9 (Canada); 81.10 (France); 81.11 (Norway).
[44] Tonga Strategic Development Framework II, Ministry of Finance & National Planning, Government of Tonga (TSDF II) p.118.
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[46] TSDF II p.119.
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[49] 'Pacific LGBTQI Human Rights Conference' (11-14 May 2015) http://arc-international.net/wp-content/uploads/2011/08/SOGIHR-Report-final.pdf (Accessed 19 October 2017).
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[51] Tonga Leitis' Association Strategic Plan 2016- 2020 (2016) 3.
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[55] Cabinet Decision number 1272 of 30 November 2016 and Cabinet Decision number 42 of 27 Jan 2017. Cabinet Sub-Committee comprised of the following members: Minister of Justice (Chair); Minister of Police (Deputy Chair); Commissioner of Police, Director of Public Prosecutions, Head of Customs, Head of Prisons, Secretariat of the Cabinet Sub-Committee – Ministry of Justice, any other member can be co-opted.
[56] Recommendation 79.46 (Canada).
[57] *Tonga launched its Freedom of Information Policy*, 04 July 2012, Ministry of Information and Communication.
[58] *Tonga National Right to Information Bill*, 10 April 2014, Ministry of Information and Communication.
[59] *Transcript of the Speech by the Prime Minister of Tonga, Lord Tu'ivakano, Minister for Information, at the Opening Ceremony of the first marking of the International Archives Day on Tonga* on 10 June 2013, Prime Minister's Office.
[70] Recommendation 79.49 (Indonesia); 79.50 (Malaysia); 79.51 (Singapore); 79.52 (Bhutan).
[71] Recommendation 81.12 (Chile); 81.13 (Slovenia); 81.14 (Hungary).
[72] Royal Land Commission Final Report (2012) 55.
[73] Royal Land Commission Final Report (2012) 55.
[74] Royal Land Commission Final Report (2012) 56.
[75] Royal Land Commission Final Report (2012) 58.
[76] Recommendation 81.27.
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Compilation on Tonga

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a compilation of information contained in reports of treaty bodies and special procedures and other relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies[a, b]

2. The United Nations country team noted that, despite the recommendations accepted by Tonga during the second cycle of the universal periodic review to ratify core international human rights treaties, no concrete progress had been made thus far. It recommended that Tonga ratify the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities.[3]

3. The United Nations country team stated that, in March 2015, the Cabinet had approved the process of ratification of the Convention on the Elimination of All Forms of Discrimination against Women, with a number of reservations pertaining to the accession to the throne, nobility, abortion and same-sex marriage. Progress had stalled due to public protest, particularly by women religious leaders associated with the church. In February 2017, the then Prime Minister called for public consultations on ratification with the participation of local women's groups, given that the country was divided over the subject.[4]

4. The United Nations Educational, Scientific and Cultural Organization (UNESCO) encouraged Tonga to ratify the UNESCO Convention against Discrimination in Education and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[5]

5. The United Nations country team noted that Tonga had reports outstanding before the Committee on the Elimination of Racial Discrimination (since 2001) and the Committee on the Rights of the Child (since 1997). It encouraged Tonga to fulfil its reporting obligations under both conventions.[6]

6. The United Nations country team encouraged Tonga to consider transforming existing ad hoc structures into a national mechanism for reporting and follow-up in order to engage with United Nations human rights mechanisms in a constructive and systematic manner.[7]

7. The United Nations country team stated that, in January 2013, Tonga had extended a standing invitation to all special procedure mandate holders. It mentioned that, in 2016, the Working Group on the issue of discrimination against women in law and in practice had asked to visit the country, but that the visit had yet to take place.[8]

III. National human rights framework[9]

8. The United Nations country team noted that Tonga had held general elections in November 2014 that were deemed free and fair.[10]

9. The United Nations country team reported that, in May 2017, the Government had proposed an amendment to the Constitution with a view to empowering the Prime Minister to appoint the Attorney General, the Police Commissioner and the Anti-corruption Commissioner (in lieu of the Privy Council and the King). In August 2017, the King dissolved the Legislative Assembly and ordered new elections to be held in November 2017. That decision was reportedly taken after the Speaker of the Legislative Assembly had raised concerns about the proposed constitutional amendment, which had been deemed unconstitutional, the approval by the Government of the process of ratification of the Convention on the Elimination of All Forms of Discrimination against Women and a regional trade agreement, which were seen as an attempt to bypass the King and the Privy Council. The United Nations country team recommended that Tonga continue the reform and amendment of the Constitution to widen the country's democratic space and respect for human rights.[11]

10. The United Nations country team stated that, in December 2016, Tonga had established an Ombudsman's Office, replacing the Office of the Commissioner for Public Relations that had been established in 2001. The Ombudsman, who was accountable to the Legislative Assembly, was responsible for investigating complaints received from all persons related to administrative actions and decisions made by any public department, enterprise or other public body, or by any officer, including any Minister or Governor. He was also empowered to act on his own volition. However, the United Nations country team stressed that Tonga still had no national human rights institution. It recommended that Tonga establish such an institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) as a matter of priority.[12]

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

1. Equality and non-discrimination[13]

11. The United Nations country team reported that section 4 of the Constitution guaranteed non-discrimination and equality for all citizens of Tonga. In 2014, the Government introduced the revised national policy on gender and development, which focused on promoting equal access, participation and distribution of the benefits of the

development process for all women, men and children. However, such measures had yet to be fully implemented.[14]

12. The United Nations country team noted that the Criminal Offences Act (1988) still criminalized same-sex sexual relations between consenting adults and carried a maximum penalty of 10 years' imprisonment and, at the court's discretion, the use of corporal punishment. The 1988 Constitution of Tonga, while containing a declaration of rights that provided for equality before the law (clause 4), did not refer to freedom from discrimination, nor did other laws exist ensuring protection from discrimination on grounds of sexual orientation and gender identity.[15]

13. The United Nations country team added that Tongan culture was supportive of transgender and gender-diverse people and had a strong traditional *leiti* (or *fakaleiti*) community. The Tonga Leitis Association was well respected and had the support of the Tongan royal family. Nonetheless, *leitis* enjoyed no legal recognition and cross-dressing remained a crime under section 81 (5) of the Criminal Offences Act. Under section 136 of the Act, a person convicted of sodomy could be sent to prison for up to 10 years.[16] In December 2016, the Tonga Leitis Association had held a national consultation with the Government to revise criminal laws to protect lesbian, gay, bisexual, transgender and intersex persons. However, legal reform in this area was yet to occur.[17]

14. Stressing that during the second cycle of the universal periodic review, Tonga had accepted the recommendation to strengthen measures to eliminate all discriminatory treatment related to sexual orientation and gender identity,[18] the United Nations country team recommended that Tonga commit to equality and non-discrimination by repealing the provisions of the Criminal Offences Act that criminalized same-sex sexual relations between consenting adults, combat discrimination against them and prevent violence by raising public awareness of the situation of lesbian, gay, bisexual, transgender and intersex persons.[19]

2. Development, the environment, and business and human rights[20]

15. The United Nations country team stressed that Tonga was highly prone to natural disasters and that the effects of climate change were liable to increase that susceptibility, which could threaten all aspects of sustainable development in the country.[21]

16. It noted that in June 2017, the Government, with the support of the Environment National Adaptation Plan Global Support Programme of the United Nations Development Programme, had held discussions on the second joint national action plan for climate change adaptation and disaster risk management. Furthermore, Tonga had endorsed the Sendai Framework for Disaster Risk Reduction (2015-2030) as the global strategy for building the resilience of communities, with the aim of reducing risk from natural hazards and disasters so as to help ensure sustainable development.[22] The United Nations country team referred to a study completed by the World Bank in 2016, which found that in many cases existing technical knowledge and financial capacity were insufficient to adequately address climate and disaster vulnerabilities and reduce risks. Implementation and absorptive capacities remained a key issue and the effectiveness of early warning systems was also affected by the geographical expansiveness of the country, as well as the limitations and high costs of communications systems.[23]

17. The United Nations country team recommended that Tonga periodically assess the impact of climate change and natural disasters, particularly with reference to the enjoyment of human rights by the poor and lower-income segments of the population and various other social groups, and assist them in becoming more resilient in the face of such disasters; that it develop sector-based plans and programmes that fully integrated climate resilience with a priority focus on biodiversity, education, energy, fisheries, forestry, health, infrastructure, land, water and youth; and ensure that stakeholders, including target groups, were consulted while planning such interventions.[24]

B. Civil and political rights

1. Right to life, liberty and security of person[25]

18. The United Nations country team noted that sexual and gender-based violence, including intimate-partner violence, sexual assault and rape, and violence against transgender persons, was widespread.[26]

19. The United Nations country team noted that Tonga had passed the Family Protection Act (2013), which included provisions that enhanced protection against domestic violence in several ways: by preventing violence through increased awareness; by granting greater power to police officers to provide protection to victims through the issuance of protection orders; by providing health and mental health support and counselling to victims; by imposing heavy penalties on offenders; and by strengthening the institutional response through the creation of the Family Protection Advisory Council under the Ministry of Internal Affairs.[27]

20. The United Nations country team also noted that, although corporal punishment was prohibited by law as a disciplinary measure in prisons, provisions in the Prison Rules (1947) (particularly articles 45, 163, 164 and 165) had not been formally repealed as of May 2017. It also noted that corporal punishment was considered a lawful sentence for crimes under section 24 of the Criminal Offences Act (1926). The law empowered the authorities to give boys under the age of 16 as many as 20 lashes "with a light rod or cane composed of tamarind or other twigs", whereas adults may be given up to 26 lashes "with a cat (cat of nine tails) pattern approved by the Cabinet" (art. 31). It recommended that Tonga strictly enforce the legal and constitutional provisions concerning the prohibition of torture and cruel and inhuman and degrading treatment and punishment.[28]

21. The United Nations country team noted that the Education Act (2013) prohibited (corporal) punishment in the form of verbal abuse and the use of force against any student in school or on school premises. However, various reports had revealed that corporal punishment remained widespread in the country, including in primary and secondary school settings. It recommended that Tonga take specific measures at the legislative and administrative levels to prohibit the corporal punishment of children in both public and in private settings.[29]

2. Administration of justice, including impunity, and the rule of law

22. The United Nations country team recommended that Tonga establish separate juvenile courts.[30]

3. Fundamental freedoms and the right to participate in public and political life[31]

23. UNESCO reported that, under section 96 of the Communications Act (2015), the Ministry of Information and Communications had the power to censor, subject to the approval of the Minister, a licensee if the media supplied content that was indecent, displayed excessive violence, was blasphemous, treasonous, seditious, defamatory or went against Tongan laws. The Ministry might also require a licensee to supply content of religious interest, related to matters of national interest or educational matters. The Ministry might also determine the "extent and manner in which a licensee may provide political or controversial content".[32] UNESCO added that the Communications Commission was responsible for licensing and controlling radio frequencies and for enforcing the Communications Act (2015). That body was composed of four members appointed by an Appointments Committee consisting of the Minister of Information and Communications, an information and communication technology expert and a consumer representative. UNESCO recommended that Tonga consider strengthening the independence of broadcast licensing in line with international standards.[33]

24. The United Nations country team also stated that the then Prime Minister had recently threatened the public broadcaster owing to his dissatisfaction with their reporting. The Government had also fired the Chair of the board and the general manager of the Tonga Broadcasting Commission; the latter was now before the courts. The United Nations

country team added that, in June 2017, the Government had announced that the national broadcaster, the Tonga Broadcasting Commission, would be privatized.[34] It recommended that Tonga respect the right to freedom of expression in law and practice.[35]

25. UNESCO noted that defamation was regarded as a criminal offence under the Defamation Act and was punishable by a fine or imprisonment, if the fine was not paid. It recommended that Tonga decriminalize defamation and place it within a civil code that is in accordance with international standards.[36]

26. The United Nations country team stated that, although the current legal and institutional framework provided opportunities for citizens, including civil society organizations to participate in the law-making and oversight process through standing committees and public hearings, those mechanisms needed to be strengthened to ensure that the engagement process and its outcomes were inclusive, open, transparent and participatory. Currently, civil society organizations, churches, registered interest groups and other constituents were not taking a full part in the law-making, oversight, national planning and budgeting process. The United Nations country team therefore recommended that Tonga strengthen such mechanisms.[37]

27. The United Nations country team noted that civil society organizations faced a range of capacity constraints, including an uncertain funding environment, a lack of coordination and limited capacity for financial management and reporting. It recommended that Tonga create a conducive environment for civil society to grow and thrive so that it might provide critical input for the development of public policies.[38]

28. UNESCO encouraged Tonga to fully implement the relevant provisions under the Convention concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage that promoted access to, and participation in, cultural heritage and, as such, were conducive to implementing the right to take part in cultural life. In doing so, Tonga was encouraged to give due consideration to the participation of communities, practitioners, cultural actors and non-governmental organizations from civil society, as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, youth and people with disabilities), and to ensure that equal opportunities were given to women and girls to address gender disparities.[39]

29. UNESCO noted that Tonga had not submitted its national report on the implementation of the Recommendation on the Status of Scientific Researchers (1974) for the second consultation, covering the period from 2013 to 2016. It encouraged Tonga to report on any legislative or other steps taken by the Government to ensure the application of this international standard-setting instrument.[40]

C. Economic, social and cultural rights

1. Right to work and to just and favourable conditions of work

30. The United Nations country team noted that gender discrimination in terms of wages and work conditions remained an issue. Men outnumbered women in paid employment outside the agricultural sector and they were paid 20 to 50 per cent more than women. Higher education for young women had failed to lead to better employment outcomes owing to gender barriers in labour markets, gender stereotypes about suitable occupations for women and traditional expectations regarding women's unpaid domestic activity and taking care of the family. In the private sector, women were almost invisible on company boards. In the public sector, women usually occupied lower-level positions. The participation of women in the workforce was highest in the informal sector. Unemployment among women was typically higher in rural and remote outer islands.[41] The United Nations country team recommended that Tonga ensure in law and in practice that women were paid a salary equal to that of their male counterparts for the same type of work.[42]

2. Right to an adequate standard of living[43]

31. The United Nations country team mentioned that Tonga had witnessed a decline in the contribution of the primary sector to gross domestic product and a general weakening of

the rural sector, where many of the vulnerable and poor lived. The declining importance of the primary sector had been exacerbating inequality, as rural households struggled to generate cash income to purchase the basic essentials. In urban areas, poverty was mostly the result of rural-urban migration caused by the movement of people from rural and remote areas of the country to towns and cities in search of the better employment opportunities needed to improve their livelihoods.[44]

32. The United Nations country team emphasized that, in Tonga, the share of the poorest quintile in total household consumption had increased over the last decade, marking a reduction in income inequality of around 10 per cent. It added that Tonga was a net food-importing country and its dependency on availability made it vulnerable to the price volatility of food imports. Furthermore, access to clean water and basic sanitation was of growing concern in the country. Changing weather patterns, as a result of climate change, had negatively impacted the availability of water resources and the effectiveness of sanitation. The United Nations country team emphasized that if unaddressed, that might result in more severe crises, including social unrest, which would particularly affect urban areas.[45]

3. Right to health[46]

33. The United Nations country team stated that, despite overall improvements in health services, maternal health continued to be a cause for concern. Maternal morbidity left many women chronically ill or disabled.[47]

34. It recommended that Tonga continue strengthening universal access to health-care services, including sexual and reproductive health services, particularly for newborns and children. It also recommended providing life skills-based education and incorporating sexual education into school curricula.[48]

35. The United Nations country team also stated that forced sex constituted a key risk for sexually transmitted infections and HIV transmission, as well as other sexual and reproductive health problems, including unwanted pregnancies and psychological trauma. Various studies had revealed that 30 per cent of women under 25 in Tonga suffered from a sexually transmitted infection, largely due to a strong religious disapproval of the use of condoms.[49]

4. Right to education[50]

36. The United Nations country team stressed that Tonga had a 99.4 per cent literacy rate and that progress had been made toward achieving universal primary education. While the gender parity index in 2012 of enrolment at the pre-primary and primary level stood at 0.99, challenges remained, particularly for remote communities and persons with disabilities. These included gendered learning pathways that limited opportunities for women and girls to engage in education suiting their interests and capabilities.[51]

37. UNESCO noted that, at the pre-primary level, Tonga had made significant strides in achieving Education for All goal 1 on expanding early childhood care and education by increasing the gross enrolment ratio from 29 per cent in 2000 to 71 per cent in 2012. While higher than the world average of 54 per cent, that ratio indicated that almost 30 per cent of children in Tonga were not in pre-primary education.[52]

38. The United Nations country team stated that while the expansion of free basic education had been key to improving access to primary schooling for children from low-income households, the quality of education remained of concern.[53]

39. UNESCO noted the lack of recent data regarding the implementation of the education policy framework for the period 2004 to 2019 and the absence of a monitoring system.[54]

40. UNESCO strongly encouraged Tonga to enshrine the right to education within its Constitution and submit State reports for the periodic consultations on its education-related standard-setting instruments. It also encouraged Tonga to monitor and report on the implementation of its education policy framework; to further its actions on improving

quality and human rights education, and to share with UNESCO any relevant information to update its country profile on the UNESCO global database on the right to education.[55]

41. UNESCO reported that Tonga had not submitted its national reports in the framework of the eighth (2011-2013) and ninth (2016-2017) consultations of member States on the measures taken to implement the Recommendation against Discrimination in Education, and the fifth (2012-2013) and sixth (2016-2017) consultations on the measures taken for the implementation of the 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms.[56]

D. Rights of specific persons or groups

1. Women[57]

42. The United Nations country team stressed that owning land was very difficult for women in Tonga. The Land Act prevented them from inheriting land, which greatly limited their capacity to access financial services. It stressed that, although some matriarchal land-tenure systems existed, real control and management of the land lay with brothers and other men of the clan. Tongan women seldom participated in decision-making related to the development of land and were seldom able to benefit from such developments. The United Nations country team recommended that Tonga amend the Land Act currently in effect, particularly its provision preventing women from inheriting land.[58]

43. The United Nations country team emphasized that the representation of women in the Legislative Assembly remained extremely low, with currently only one woman representative. It recommended that Tonga take specific measures to increase the representation of women at the decision-making level, including within the Legislative Assembly. In particular, Tonga should expedite the adoption of the necessary laws on increasing women's representation in the legislature and other decision-making bodies through temporary special measures. The United Nations country team mentioned the initiative of a women's coalition group pushing for a bill to be drafted in this area.[59]

44. The United Nations country team recommended that Tonga introduce more targeted programmes to take into account the specific needs of women belonging to marginalized and vulnerable groups, such as rural women and women with disabilities.[60]

45. Against that background, the United Nations country team recalled the recommendation from the second cycle of the universal periodic review for Tonga to prioritize gender equality initiatives within its strategic development framework and intensify efforts to increase women's participation at all formal decision-making levels.[61]

2. Children[62]

46. The United Nations country team stressed that child marriage remained a critical issue in Tonga. Despite Tonga being party to the Convention on the Rights of the Child, the marriage law in Tonga permitted children to marry as early as 15 years of age with parental permission. Girls were often forced by their parents to marry and in certain cases teenage pregnancy was involved. In other cases, girls were forced into marriage simply because they had been seen with boys. In some instances, girls were even forced to marry their rapists. That situation had left many children, particularly girls, exposed to early pregnancy, thereby putting their and their babies' health at risk, even resulting in death at times.[63]

47. The United Nations country team added that this situation had also resulted in an increased risk of domestic violence, including marital rape and emotional abuse, as well as children leaving school early, which deprived them of their right to education.[64]

48. The United Nations country team noted that, in March 2017, the Ministry of Justice had partnered with a local women and child rights group to launch a campaign entitled "Let Girls be Girls", with the aim of putting an end to child marriage and calling for the repeal of the section of the Constitution dealing with the marriage law.[65]

49. The United Nations country team recommended that Tonga amend, as a matter of priority, the marriage law, including raising the marriage age to 18 and declaring marriage below the minimum legal age as void ab initio, meaning that it should have no legal basis under any pretext, be it custom, religion, or traditional practice; increase the existing range of punishments and fines for all parties involved in performing or abetting the performance of child marriages so they are commensurate with the seriousness of the offence; recognize child marriage as a form of child labour, explicitly criminalizing child labour within the domestic sphere under laws related to children; and continue public campaigns such as "Let Girls be Girls", in collaboration with civil society, relevant government ministries and religious leaders.[46]

5. Persons with disabilities

50. The United Nations country team reported that, in 2015, the Government had established a Social Protection and Disability Division under the Ministry of Internal Affairs, with a view to developing social protection policies and schemes to support vulnerable populations, including persons with disabilities, and improve their quality of life by 2025. However, such institutional arrangements had yet to be supported with the help of robust legal and policy frameworks that recognized the rights of persons with disabilities. The United Nations country team recommended that Tonga strengthen the legal and policy framework related to improving the access of persons with disabilities to health, education, employment, public places, transport and information.[47]

51. The United Nations country team echoed the findings of a 2013 study conducted by the United Nations Population Fund in three countries, including Tonga, which found that women with disabilities faced a number of challenges.[48] For instance, they were particularly vulnerable to hardship and poverty and were often culturally, socially and economically excluded. Despite some helpful laws, policies and practices, women with disabilities were less educated, experienced higher rates of unemployment, were more likely to be abused, were poorer and more isolated, experienced worse health outcomes and generally had a lower social status than men living with disabilities or female peers elsewhere. Moreover, women with disabilities were two to three times more likely to become victims of physical and sexual abuse than women with no disabilities. Their access to reproductive health care was minimal and they suffered greater vulnerability as a result.[49]

Notes

[1] Tables containing information on the scope of international obligations and cooperation with international human rights mechanisms and bodies for Tonga are available at www.ohchr.org/EN/Countries/AsiaRegion/Pages/TOIndex.aspx.
[2] For the relevant recommendations, see A/HRC/23/4, paras. 79.1-79.21, 79.27-79.30, 81.16-18 and 82.1-82.3.
[3] United Nations country team submission for the universal periodic review of Tonga, pp. 3, 10 and 13.
[4] Ibid., p. 3.
[5] UNESCO submission for the universal periodic review of Tonga, p. 5-6.
[6] United Nations country team submission, p. 3.
[7] Ibid., p. 4.
[8] Ibid., p. 5.
[9] For the relevant recommendations, see A/HRC/23/4, paras. 79.23-79.24, 79.26, 79.49, 80.1 and 81.1-81.3.
[10] United Nations country team submission, p. 4.
[11] Ibid.
[12] Ibid., p. 5.
[13] For the relevant recommendations, see A/HRC/23/4, paras. 81.5-81.10.
[14] United Nations country team submission, p. 5.
[15] Ibid., p. 13-14.
[16] *Ibid., p. 15.*
[17] Ibid.
[18] Ibid., p. 16.
[19] Ibid.
[20] For the relevant recommendation, see A/HRC/23/4, para. 79.31.

[21] United Nations country team submission, p. 17.
[22] Ibid., p. 17.
[23] Ibid.
[24] Ibid., p. 18.
[25] For the relevant recommendations, see A/HRC/23/4, paras. 79.37-79.38, 79.40, 79.42, 79.44-79.45, 80.3, 81.15 and 81.19-81.27.
[26] United Nations country team submission, p. 12.
[27] Ibid., p. 5-6.
[28] Ibid., p. 9-10.
[29] Ibid., p. 10.
[30] Ibid.
[31] For the relevant recommendations, see A/HRC/23/4, paras. 79.22 and 79.46.
[32] UNESCO submission, p. 3.
[33] Ibid., p. 6.
[34] Ibid., p. 9.
[35] Ibid.
[36] UNESCO submission, p. 6.
[37] United Nations country team submission, p. 11.
[38] Ibid.
[39] UNESCO submission, p. 7.
[40] Ibid.
[41] United Nations country team submission, pp. 6 and 11-12.
[42] Ibid. p. 9.
[43] For the relevant recommendations, see A/HRC/23/4, paras. 79.25 and 79.47.
[44] United Nations country team submission, p. 11.
[45] Ibid., p. 12.
[46] For the relevant recommendation, see A/HRC/23/4, para. 79.48.
[47] United Nations country team submission, p. 12.
[48] Ibid., p. 13.
[49] Ibid.
[50] For the relevant recommendations, see A/HRC/23/4, paras. 79.50-79.52.
[51] United Nations country team submission, p. 13.
[52] UNESCO submission, p. 5.
[53] United Nations country team submission, p. 13.
[54] UNESCO submission, pp. 4-5.
[55] Ibid., p. 6.
[56] Ibid., p. 2.
[57] For the relevant recommendations, see A/HRC/23/4, paras. 79.32-79.36, 79.39, 79.41, 79.43, 80.2, 81.8, 81.11-81.14 and 82.6.
[58] United Nations country team submission, pp. 7-8.
[59] Ibid., p. 7.
[60] Ibid., p. 8.
[61] Ibid.
[62] For the relevant recommendation, see A/HRC/23/4, para. 81.28.
[63] United Nations country team submission, p. 6.
[64] Ibid.
[65] Ibid.
[66] Ibid., p. 8.
[67] Ibid., p. 14.
[68] United Nations Population Fund, *A Deeper Silence: the Unheard Experiences of Women with Disabilities — Sexual and Reproductive Health and Violence against Women in Kiribati, Solomon Islands and Tonga* (2013).
[69] Ibid., p. 10.

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Summary of Stakeholders' submissions on Tonga*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of four stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations[2] and cooperation with international human rights mechanisms and bodies[3]

2. The Tonga Civil Society Organisation - Human Rights Task Force (Joint Submission 1, JS1), noted that Tonga had ratified only a few of the core human rights conventions – the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC) – and had become a signatory to the Convention on the Rights of Persons with Disabilities (CRPD).[4]

3. JS1 highlighted that Tonga had not ratified the following instruments: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant

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on Civil and Political Rights (ICCPR) and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Optional Protocols to CRC.[5]

4. Furthermore, JS1 noted with concern that since the last universal periodic review in 2012, Tonga had failed to make positive steps towards the ratification of the above-mentioned instruments. JS1 called on Tonga to immediately ratify CEDAW, CAT and CRPD, consider ratifying the other human rights instruments to which Tonga is not a party, and fulfil its commitment to reporting on CRC and CERD and to work towards developing implementation plans for CRC, CERD, CEDAW and CRPD.[6]

5. JS1 noted that Tonga had become a member of the International Labour Organisation (ILO) in February 2016, and recommended that it ratify the eight fundamental ILO Conventions.[7]

6. JS1 recommended that Tonga accede to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[8]

7. JS1 reported that in 2015, the Government of Tonga had stated at the 59th session of the Commission on the Status of Women in New York that it was ready to commence the process of ratifying CEDAW. However, a decision by the King in Privy Council put on hold the process, claiming that the decision of the Government to ratify CEDAW contradicted Clause 39 of the Constitution, which stipulated that only the King could make treaties. In this regard, JS1 underscored that a judicial review was needed to clarify such claim in order for the Government to move forward with the ratification of CEDAW.[9]

8. JS1 noted that Tonga had committed itself to the following international and regional gender equality conventions and agreements: the Beijing Platform for Action of Women (1995); the Commonwealth Plan of Action for Gender Equality (2005-2015); the Revised Pacific Platform of Action for Gender Equality (2005-2015); the Pacific Leaders Gender Equality Declaration (2012); and the Sustainable Development Goals (2015-2030).[10]

B. National human rights framework[11]

9. JS1 noted that the 2014 General Election recorded a milestone in Tonga's political history. The country had witnessed the swearing in of its first Prime Minister who was elected from among the representatives of the people.[12] Following the adoption in 2010 of a democratic reform to its political structure, the Parliament comprised 17 members elected by the people and nine nobles elected by their peers. JS1 claimed that the retention of seats for the nobles was undemocratic and facilitated the manipulation of power. It also mentioned that the nobles received a yearly remuneration taken from the taxpayers' money, but with no clear job description. JS1 called on the Government to consider reviewing the nine seats reserved for the nobles and amending the law to allow the people to elect the nobles rather than the nobles electing their own representatives, as they only represent a minority of the population. It also called on the Government to consider abolishing the remuneration package assigned for the nobles.[13]

10. JS1 underscored that in Tonga, there was neither a human rights institution, nor a national body tasked with monitoring and documenting human rights violations. It highlighted the importance of having such a national institution that could act as a coordination body overseeing all human rights issues within the country, as well as helping to closely monitor UPR recommendations. It supported the idea of establishing a national human rights institution that operated independently and would allow the sharing of expertise and resources with other international human rights agencies and governments.

Therefore, JS1 recommended that the Government prioritize the establishment of a national human rights institution.[14]

11. JS1 stated that the Constitution of Tonga prohibited discrimination based on class, religion, race, but it did not recognize discrimination based on gender. It added that the National Policy on Gender and Development had been formulated in 2001 and was revised in 2014, but it faced the common challenge of budget constraints that limited the capacity of implementation. JS1 recommended that gender be included as a ground to prohibit discrimination in the Constitution of Tonga, and that gender equality be prioritized within the Tonga Strategic Development Framework along with adequate budget commitments.[15]

12. JS1 noted that there were increasing concerns that the Government of Tonga and its line ministries had not consolidated a commitment to provide human rights training for public officials. It recommended that State officials, in particular the senior police and army personnel, be provided with such training. JS1 also recommended that church leaders, who could play a critical role in advancing human rights in the country, be similarly trained on human rights. JS1 stated that there was an increasing demand for human rights training with recognition of the key role played by its members in providing human rights training as part of their mandates.[16]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[17]

13. JS1 stressed that the legal age of majority for the nobles was 21, while it was 18 for the King. However, there was no mention of an age of majority for Tongans in general. JS1 called on the Government to set the age of majority for all Tongans to 18, recalling that the Committee on the Rights of the Child defined all under the age of 18 as children.[18]

14. JS1 noted that there were increasing concerns of bullying suffered by Lesbian, Gay, Bisexual and Transgender (LGBT) students in schools and within their own families. The Ministry of Education, as well as other line Ministries, were reportedly usually hesitant to implement any policy or measures to promote and protect the human rights of LGBT students. JS1 recommended that Tonga make readily available information on LGBT to students in all schools in Tonga. It also recommended that Tonga enforce anti-bullying measures to protect LGBT students as it considered that it was as much a priority as any other issue.[19]

Development, the environment, and business and human rights[20]

15. JS1 stated that since the last review, the implementation of the Anti-Corruption Act, passed in 2007 and which authorized the establishment of an Anti-corruption Commission to deal with corruption in Government, had been delayed with attention diverted to establishing the Parliamentary Anti-Corruption Standing Committee. JS1 recommended that the Government implement the Anti-Corruption Act and ensure that the Anti-Corruption Commission was independent from the Government.[21]

2. Civil and political rights

Right to life, liberty and security of person[22]

16. CRIN noted that child offenders might be sentenced to capital punishment. The Criminal Offences Act 1926 provided for death penalty for treason and murder. Pregnant women convicted of a capital offence should be sentenced to life imprisonment in lieu of capital punishment. In the case of murder, the death sentence could not be applied to any person under the age of 15. CRIN stressed that it was not clear whether this limit applied to the age at the time of the offence or at the time of sentencing. No age restriction applied in the case of treason.[23] CRIN noted that no executions had been carried out in the country since 1982. Sentencing for murder had been considered by the Supreme Court in 2005, though not specifically in relation to child offenders. The Court concluded that the norm for sentencing should be life imprisonment, with capital punishment reserved for especially heinous crimes.[24] CRIN recommended that Tonga explicitly prohibit the death penalty for offences committed by persons under the age of 18.[25] JS1 raised similar concerns.[26]

17. CRIN reported that the Criminal Offences Act provided for life imprisonment for offences relating to the demolition of buildings, murder and inciting or assisting suicide, and that no limitations existed in relation to the age of the offender. Any person under the age of 15 who would be sentenced to death for murder should be sentenced to be "detained during His Majesty's pleasure".[27] CRIN recommended that Tonga explicitly prohibit life imprisonment for offences committed by persons under the age of 18, and amend the sentence of any person currently serving a sentence of life imprisonment or detention during His Majesty's pleasure for an offence committed while they were a child.[28]

18. CRIN noted that corporal punishment in the form of whipping was lawful as a sentence for males under the Criminal Offences Act. Boys under 16 might be whipped up to 20 strokes, and older males might be whipped up to 26 strokes. The punishment should be administered in one or two instalments, as specified by the Court, and should be inflicted by the gaoler in the presence of a magistrate, following certification that the offender was medically fit to undergo the punishment. CRIN added that for males convicted of certain sexual offences, theft or robbery, whipping might be ordered at the discretion of the Court in lieu of or in addition to imprisonment. For boys under 16, whipping might be ordered in lieu of imprisonment for certain sexual offences. It also stated that the Magistrates' Courts Act allowed a magistrate to impose whipping on a boy aged seven to 14 in lieu of any other punishment, to be administered in one or two instalments, not exceeding 10 strokes each.[29] CRIN noted that in 2010, the Appeal Court had overturned sentences of judicial whipping imposed on two 17 year olds and noted that this was the first time sentences of whipping had been handed down in 30 years.[30] CRIN recommended that Tonga explicitly prohibit all forms of corporal punishment for offences committed by persons under the age of 18.[31]

19. JS1 made some similar observations in relation to corporal punishment, adding that the Evidence Act stated that any male child could be whipped if he had wilfully given false unsworn evidence to a court; that the Manufacture of Intoxicating Liquor Act stipulated that a maximum of 10 strokes could be given to any male under the age of 18 found guilty of unlicensed intoxicating liquor; that the Order in Public Places Act provided that if any male under the age of 14 was found after 8.30 p.m. in any public amusement or public place of any kind and was without an adult guardian or parent, he might be whipped, and males under the age of 16 might also be whipped if convicted for smoking tobacco, drinking kava or was spotted in any public billiard saloon; and that the Town Regulations Act stated that any able-bodied male older than 16 years might be liable to be whipped if the police saw that he was unemployed, did not have a plantation, and had no means to support those who depended on him.[32] JS1 recommended that Tonga review all legislation that impose punishments amounting to torture as they contravene the CRC.[33]

20. The Global Initiative to End All Corporal Punishment for Children (GIEACPC) noted that Tonga had received several recommendations to prohibit corporal punishment as a sentence of the courts. The Government accepted one recommendation to "abolish any statutory provision which authorizes corporal punishment, in particular when the convicted is a child". GIEACPC stressed that since the previous review, no legal reform had been initiated, and that the Government had defended the legality of corporal punishment as a judicial sanction "as a deterrent". It stated that corporal punishment of children was lawful at home, in alternative care and non-educational day care settings and as a sentence for crime, but was prohibited in schools and in penal institutions. GIEACPC hoped that a specific recommendation would be made during the third review that Tonga clearly prohibit all corporal punishment of children, however light, in all settings, including the home and as a sentence of the courts.[34]

Administration of justice, including impunity, and the rule of law

21. CRIN underscored that there was no distinct juvenile justice law in Tonga and that the minimum age of criminal responsibility was seven.[35] It recommended that Tonga raise the minimum age.[36]

22. As in the context of the second review, JS1 mentioned the tragedy of the MV Princess Ashika, an inter-island Government-owned ferry operating in Tonga, which had sunk in August 2009. 74 passengers had lost their lives, including all women and children on board. It regretted that neither references to, nor recommendations about, this tragedy had been made during the previous review. It recommended that the recommendations highlighted in the report of the Royal Commission of Inquiry be implemented, and that the Government ensure that all victims have access to effective legal remedy.[37]

23. JS1 stated that there had been no attempts to revive legal aid support since the termination of the legal aid policy endorsed in 2006 to assist those needed legal advice and support in the aftermath of riots. It recommended that the Government revive legal aid support, particularly for the most vulnerable members of the community who lacked access to financial resources and technical legal advice based on their low income and economic status.[38]

Fundamental freedoms and the right to participate in public and political life[39]

24. JS1 stated that the Government's ongoing Public Sector Reform had seen a number of Ministries amalgamated into one Ministry without adequate consideration of the capacity necessary for managing different functions. The former Ministry of Information and Communications had been merged with other departments from the Ministries of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communication. According to JS1, it meant that the Freedom of Information Policy, launched in 2012 and still in a draft form, was competing with other priorities in such a large Ministry.[40] It recommended that the Government ensure that this policy be developed into a Freedom of Information Act.[41]

25. JS1 also stated that another recent set back was the controversial debate on the role of the Tonga Broadcasting Commission as a State enterprise expected to represent supporting views of the Government of the day. It stressed that its status should be independent from the Government, with freedom of information as one of its core values.[42]

Prohibition of all forms of slavery

26. JS1 stated that the Government, despite limited resources, had made modest progress in its law enforcement efforts to address human trafficking. Tonga prohibited all forms of human trafficking through its revised Transnational Crimes Act of 2007, which

defined human trafficking as including forced labour and forced prostitution. It recommended that Tonga consider revising the Transnational Crimes Act to protect victims of trafficking.[43]

3. Economic, social and cultural rights

Right to work and to just and favourable conditions of work

27. JS1 stated that there was no official system for supporting female workers, with the exception of maternity leave for public servants as per the Public Service Act. In the private sector, there was no legislation that ensured the welfare of female workers, including maternity leave. JS1 added that there was no minimal wage law. Over the last 30 years, the number of women in formal employment had increased almost fourfold. However, there had been little progress in the type of occupations in which women were engaged. Most women had been and were still employed in unskilled menial work or subordinate positions and therefore were paid at the lower end of the scale.[44]

28. JS1 noted that an employment relation bill had been discussed in the past 30 years, and that progress had been made since Tonga's recent ILO membership. In May 2017, a National Tripartite Committee consisting of the Government, employers and workers representatives was established. The Government had approved budget allocation during the current financial year to undertake final consultation on the Employment Relation Bill before submission to Parliament in 2018. JS1 recommended that Tonga enact this Bill to ensure the protection of workers welfare, including minimum wages.[45]

Right to health[46]

29. ADF International (ADFI) stated that resources should focus on improving conditions for pregnant women, women undergoing childbirth and postpartum women.[47] It noted that Tonga's maternal mortality ratio in 2015 was 124 maternal deaths per 100,000 live births, up from 75 per 100,000 in 1990. It stated that the high number of maternal deaths in Tonga was a pressing and urgent human rights concern. ADFI recommended that Tonga improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds.[48]

30. JS1 mentioned the common practice that requires women to obtain the consent from their husbands prior to undertaking contraceptive medical interventions, such as tubal ligation. It recommended that Tonga revise the reproduction health policy to allow women to decide the course of contraception best for them.[49]

Right to education[50]

31. JS1 stated that the Ministry of Education had still not incorporated human rights and gender into the school syllabuses at all levels, in compliance with the Family Protection Act 2013. It recommended that Tonga undertake such incorporation.[51]

4. Rights of specific persons or groups

Women[52]

32. JS1 mentioned the report of the Royal Land Commission released in 2012, which recommended increasing women's rights to land, and more specifically for women to be allowed to register a town allotment. However, this recommendation did not allow women to register bush allotments, allegedly because only men attended to the bush for agricultural

purposes. Despite attempts to recommend amendments to afford women more access and rights to land, this was an area where women continued to be economically deprived and disempowered. JS1 recommended that Tonga review the Constitution and the Land Act to allow women to own land.[53]

33. JS1 welcomed the enactment of the Family Protection Act (2013), which aimed to provide greater protection for victims of domestic violence. The Act reportedly provided for increased power for the police to issue protection orders on the spot for a maximum of seven days; a legal requirement to inform the victims of their rights and the legal proceedings that would ensue; and the formation of a committee of key community stakeholders to discuss how best to monitor and evaluate the implementation of the Act.[54]

34. JS1 pointed out that the law on sexual offences defined rape as the non-consensual penetration of the penis into the vagina, and as such, any other type of sexual abuse was not regarded or recognized as an offence. JS1 recommended that Tonga review the criminal legislation to include the use of objects and anal and digital penetration as forms of rape, which currently were regarded as sexual assault and as such resulted in a lesser charge.[55]

35. The low participation of women across the decision-making spectrum was of concern to JS1. Whilst there had been an increase in female appointed chief executive officers to government ministries, the appointment of women to the highest decision-making positions remained, in most places, stagnant. JS1 stated that, for example, there had been no women appointed judges since the last review, no female cabinet members and only one female in the Parliament following a bye-election in June 2016. In recognition of the Sustainable Development Goal 5.5, Parliament had approved a motion for two reserved seats for women. However, JS1 expressed concern that such a number (representing seven percent of the total number of parliamentarians) was low compared to UN standards and best practices. JS1 called on Tonga to take temporary special measures with a view to increasing women's participation in Parliament and key decision-making positions. JS1 noted that in June 2017, the King had invested a female as a Law Lord, which was deemed to have been a big step forward for women.[56]

36. According to JS1, the Electoral Boundaries Commission Act 2010 under which the Kingdom had been divided into 17 electoral constituencies – with one seat allocated per constituency – did not favour women candidates as it made it more difficult for women to compete with male candidates. It was even more difficult when there was a lack of support from political parties for women candidates.[57]

Children[58]

37. JS1 noted that under the Births, Deaths and Marriage Registration Act 1962, children from the ages of 15 – 17 years old were allowed to marry with parental consent. It recommended that the relevant section of this Act be repealed with a view to raising the age to 18 years.[59]

38. JS1 stated that the increasing economic pressure on families at lower income level had forced the parents to engage their children in child labour activities. It mentioned children as young as six years old wandering the streets of the capital every night selling peanuts, or selling Tongan handicrafts. There was reportedly only one officer in the Ministry of Education, and there was an urgent need for more officers. According to JS1, the Ministry of Police was not addressing this issue as it considered that the children were not committing a crime. In this context, JS1 underscored that Tonga lacked legislation to protect children from child labour.[60]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions:

ADFI	ADF International, Geneva (Switzerland);
CRIN	The Child Rights International Network, London (United Kingdom of Great Britain and Northern Ireland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom of Great Britain and Northern Ireland).

Joint submission:

JS1	**Joint submission 1 submitted by**: Tonga Civil Society Organisations Human Rights Taskforce: the Civil Society Forum of Tonga, the Ma"a Fafine mo e Famili Inc, the Women and Children Crisis Centre, the Tonga Women National Congress, The Tonga Public Service Association, the Tonga Leiti's Association, the Talitha Project and other individual human rights defenders, Nukualofa (Tonga).

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] For relevant recommendations, see A/HRC/23/4, paras. 79.1-79.21, 79.27-79.30, 81.16-18, and 82.1-82.3.

[4] JS1, p. 11.

[5] JS1, p. 11.

[6] JS1, p. 11.

[7] JS1, p. 9.

[8] JS1, p. 9.

[9] JS1, p. 8.

[10] JS1, p. 8.

[11] For relevant recommendations, see A/HRC/23/4, paras. 79.23, 79.24, 79.26, 79.49, 80.1, 81.1, 81.2, and 81.3.
[12] JS1, p. 2.
[13] JS1, p. 5.
[14] JS1, p. 3, 7 and 8.
[15] JS1, p. 9.
[16] JS1, p. 10.
[17] For relevant recommendations, see A/HRC/23/4, paras. 81.5-81.10.
[18] JS1, p. 3-4.
[19] JS1, p. 10-11.
[20] For relevant recommendations, see A/HRC/23/4, para. 79.31.
[21] JS1, p. 6.
[22] For relevant recommendations, see A/HRC/23/4, paras. 79.37, 79.38, 79.40, 79.42, 79.44-79.45, 80.3, 81.15, and 81.19-81.27.
[23] CRIN, p. 1.
[24] CRIN, p. 2.
[25] CRIN, p. 3.
[26] JS1, p. 6.
[27] CRIN, p. 1.
[28] CRIN, p. 3.
[29] CRIN, p. 2.
[30] CRIN, p. 2.
[31] CRIN, p. 3.
[32] JS1, p. 5.
[33] JS1, p. 7.
[34] GIEACPC, p. 1-3.
[35] CRIN, p. 1.
[36] CRIN, p. 3.
[37] JS1, p. 6-7.
[38] JS1, p. 7.
[39] For relevant recommendations, see A/HRC/23/4, paras. 79.22 and 79.46.
[40] JS1, p. 6.
[41] JS1, p. 7.
[42] JS1, p. 6.
[43] JS1, p. 9-10.
[44] JS1, p. 8-9.
[45] JS1, p. 9.
[46] For relevant recommendations, see A/HRC/23/4, para. 79.48.
[47] ADFI, p. 2-3.
[48] ADFI, p. 3-4.
[49] JS1, p. 9-10.
[50] For relevant recommendations, see A/HRC/23/4, paras. 79.50-79.52.
[51] JS1, p. 10.
[52] For relevant recommendations, see A/HRC/23/4, paras. 79.32-79.36, 79.39, 79.41, 79.43, 80.2, 81.4, 81.11-14, and 82.4.
[53] JS1, p. 9-10.
[54] JS1, p. 3.
[55] JS1, p. 9-10.
[56] JS1, p. 3.
[57] JS1, p. 4.
[58] For relevant recommendations, see A/HRC/23/4, para. 81.28.
[59] JS1, p. 4-5.
[60] JS1, p. 10.